APS System; (iii) such associate entity is a qualifying facility that sells electricity exclusively at rates negotiated at arms' length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale or to an electric utility company, other than any associate company of AYP within the APS System, at ''avoided cost'' as determined in accordance with FERC regulations; or (iv) such associate entity is an EWG or qualifying facility that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of such electricity is not an associate company of AYP within the APS System.

Fees and expenses in the estimated amount of $75,000 are anticipated in connection with the proposed transactions. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of the post-effective amendment has been given in the manner prescribed in Rule 23 promulgated under the Act, and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied, and that no adverse findings are necessary.

It is ordered, pursuant to the applicable provisions of the Act and rules thereunder, that the application-declaration, as amended, be, and it hereby is granted and permitted to become effective, forthwith, subject to the terms and conditions prescribed in Rule 24 under the Act, except that:

AYP shall provide, not later than 60 days following the end of each calendar quarter and 120 days after the end of each calendar year, a certificate of notification pursuant to Rule 24 that includes: (i) An unaudited balance sheet and income statement for AYP and one for each NEWCO, when established;

(ii) a narrative description of activities during the quarter just ended and a total of expenses organized by segment and, within each segment, a narrative description of services rendered by project, and new developments and updates by project type;

(iii) amounts and forms of guarantees of, and similar provisions and arrangements concerning, performance and undertaking of other obligations by AYP, or any subsidiary of AYP, which APS has granted and are currently effective, as well as indemnifications of and with respect to persons acting as sureties on bonds or other obligations on behalf of AYP, or any subsidiary of AYP, which APS has granted and are currently effective;

(iv) a description of services provided to associate companies which identifies the recipient company, the service, the charge to the associate and, with respect to FUCOs and EWGs, whether the charge was computed at cost, market or pursuant to another method, which method shall be specified; and

(v) in connection with its factoring activities, a balance sheet as of the end of the year, statement of income for the twelve months then ended and notes to the financial statements, a listing of principal amount of borrowings of AYP and each NEWCO outstanding at the end of each year, which will contain the terms of each obligation, name of lending institution and effective cost of borrowing, outstanding accounts receivable as of the end of each month, separated by associate and nonassociate companies with each nonassociate company listed separately, a detailed calculation of the annual discount for associate companies and the methodology used to arrive at that calculation, and a calculation by month of consolidated earnings coverage.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27315 Filed 11–2–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21458; 812–8868]

ESC Strategic Funds, Inc. and Equitable Securities Corporation; Notice of Application

October 27, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the Act).

APPLICANTS: ESC Strategic Funds, Inc. (the ''Company'') and Equitable Securities Corporation (the ''Adviser'').

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from the provisions of section 15(a) and rule 18f–2; and from certain disclosure requirements set forth in item 22 of Schedule 14A under the Securities Exchange Act of 1934 (the ''Exchange Act''); items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A; item 3 of Form N–14; item 48 of Form N–SAR; and sections 6–07.2(a), (b), and (c) of Regulations S–X.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting sub-advisers (the ''Managers'') approved by the Company's board of directors to serve as portfolio managers for the Company's series without obtaining shareholder approval of the agreements with the Managers, and permitting the Company to disclose only aggregate sub-advisory fees for each series in its prospectuses and other reports.

FILING DATES: The application was filed on March 3, 1994, and amended on August 3, 1995, and October 26, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 800 Nashville City Center, 511 Union Street, Nashville, Tennessee 37219–1743 (Attention: W. Howard Cammack, Jr.).

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney at (202) 942–0579, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a registered open-end management investment company incorporated under Maryland law. The Company offers five separate investment portfolios (each a ''Fund,'' and together, the ''Funds''), each with distinct investment objectives, policies, and restrictions. These Funds are: ESC Strategic Appreciation Fund, ESC Strategic Global Equity Fund, ESC Strategic Small Cap Fund, ESC Strategic Income Fund, and ESC Strategic Asset

Preservation Fund.[1] Shares of the Funds are offered to individuals, institutions, corporations, and fiduciaries.

2. The Adviser is a registered investment adviser and broker-dealer that provides overall investment management for the Funds pursuant to an investment advisory agreement (''Investment Advisory Agreement'').

3. The specific investment decisions for each Fund are made by one or more Managers, each of whom has discretionary authority to invest all or a portion of the assets of a particular Fund, subject to general supervision by the Adviser and the board of directors of the Company. Each Manager has been recommended by the Adviser, and selected and approved by the board of directors of the Company, including a majority of the Company's directors who are not interested persons of the Company, the Adviser, or the Manager, as well as by the initial sole shareholder of each Fund. Each Manager performs services pursuant to a written portfolio management agreement (''Portfolio Management Agreement''). Applicants currently do not anticipate that the number of Managers for any Fund will be reduced. The number of Managers may be increased, however, if the Company or one or more Funds experience a significant increase in total assets over time.

4. One of the Managers, Equitable Asset Management (''EAM''), is an affiliated person (as defined in section 2(a)(3) of the Act) of the Adviser. EAM is one of three Managers of ESC Strategic Appreciation Fund, and is the sole Manager of ESC Strategic Small Cap Fund and ESC Strategic Asset Preservation Fund.

5. The Adviser is responsible for recommending to the Company's board of directors the retention of one or more Managers for each Fund, for allocating and reallocating assets among Managers of Funds with multiple Managers, and for recommending the termination of a Manager when deemed advisable. The Adviser selects Managers based on the continuing quantitative and qualitative evaluation of their skills and proven abilities in managing assets pursuant to a specific investment style. The Adviser monitors continually the performance of Managers as well as management firm staffs and organizations to assess overall competence. For the advisory services the Adviser provides the Funds, each Fund pays an investment advisory fee to the Adviser. The Adviser, out of these fees, pays the Managers' fees at no additional cost to the Funds.

6. For three of the Funds, the Adviser seeks to enhance performance and reduce market risk by allocating a Fund's assets among multiple ''specialist'' Managers (the ''Multiple Manager Strategy''). Under this strategy, the Adviser allocates portions of a Fund's assets among multiple Managers with dissimilar investment styles and security selection disciplines. The Adviser monitors the performance of both the total Fund portfolio and of each Manager. The Adviser, to the extent it deems appropriate to achieve the overall objectives of the particular Fund, will reallocate Fund assets among individual Managers or recommend to the Company's board of directors that it employ or terminate particular Managers. As a result of this strategy, the Adviser believes the Funds with multiple Managers may achieve a better rate of return with lower volatility than typically would be expected of any one management style.

7. Applicants request an order permitting the Company to enter into new or materially amended Portfolio Management Agreements with the Managers without obtaining shareholder approval. Without the requested relief, the Company would be prohibited from entering promptly into a new Portfolio Management Agreement or amending materially an existing Portfolio Management Agreement, and would be prohibited from continuing relations with an existing Manager whose contract has been assigned as a result of a change of control, unless the particular Fund involved were to incur the expense of convening a special shareholder meeting. Although shareholders will not vote on a new Manager or a materially amended Portfolio Management Agreement, applicants will furnish shareholders an information statement within sixty days that includes all the information that would have been provided in a proxy statement. Moreover, applicants will not enter into a Portfolio Management Agreement with any Manager that is an affiliated person (as defined in section 2(a)(3) of the Act) of the Company or the Adviser other than by reason of serving as a Manager to one or more of the Funds (an ''Affiliated Manager'') without such agreements being approved by the shareholders of the applicable Fund. The Investment Advisory Agreement between the Adviser and the Fund would in all cases continue to be subject to the shareholder voting requirements of the Act.

8. Applicants request an exemption from the various disclosure provisions that may require applicants or others to disclose the fees paid by the Adviser to individual Managers. Applicants propose to disclose (both as a dollar amount and as a percentage of a Fund's net assets) in the Funds' registration statements and other public documents only the aggregate amount of fees paid by the Adviser to the Managers of each Fund (''Limited Fee Disclosure''). Limited Fee Disclosure means: (a) Fees paid to the Adviser by each Fund, in dollar amount and as a percentage of each Fund's assets; (b) aggregate fees paid by the Adviser to Managers of each Fund; (c) net advisory fees retained by the Adviser with respect to each Fund after payment of Managers' fees; and (d) fees paid by a Fund to any Affiliated Manager.

Applicants' Legal Analysis

1. Section 15(a) makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract which precisely describes all compensation to be paid thereunder and which has been approved by a majority of the investment company's outstanding securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants state that the Company's structure is different from that of traditional investment companies. In addition to its Adviser/Manager structure for all Funds, the Company offers the Multiple Manager strategy of portfolio management to investors with certain investment objectives. Applicants state that shareholders receive the benefit of the Adviser's constant supervision of these Managers, so that the proportion of their assets subject to particular Manager styles can be reallocated (or new Managers introduced) in response to changing market conditions or Manager performance, in an attempt to improve the Fund's overall performance.

3. Applicants assert that, by investing in a Fund, investors are effectively electing to have the Adviser select one or more Managers best suited to achieve that Fund's investment objectives. Applicants argue that, because the Managers are concerned only with selection of portfolio investments in accordance with a Fund's investment objectives and policies, the role of the Managers is comparable to that of individual portfolio managers employed

[1] Applicants also request relief with respect to any additional Fund organized in the future and for any open-end, management investment company advised by the Adviser, or a person controlling, controlled by or under common control with the Adviser, in the future, provided that such investment company operates in substantially the same manner as the Funds and complies with the conditions to the requested order (''Future Company'').

by other investment firms. Applicants contend, therefore, that it is the Adviser, not the Managers, on whom the Company's investors rely for investment management services.

4. Applicants state that the Company's prospectuses and statements of additional information have continuously disclosed that applicants were seeking exemptive relief from the requirement for shareholders to approve the retention of new Managers. Applicants assert that, without exemptive relief, the Company would be required to call a shareholders meeting whenever it decides to employ new or additional Managers, or to approve a new Portfolio Management Agreement after an assignment or due to a material change in terms. Applicants argue that, given the nature of the Company's operations and investors' reasons for investing in the Funds, requiring shareholder approval of the Portfolio Management Agreements would merely increase the Funds' expenses and delay the prompt implementation of actions deemed advisable by the Adviser and the Company's board of directors.

5. Form N–1A is the registration statement used by open-end management investment companies to register under the Act and register their securities under the Securities Act of 1933 (the ''Securities Act''). Items 2, 5(b)(iii), and 16(a)(iii) of Form N–1A require the Company to disclose in its prospectus the investment adviser's compensation and the method of computing the advisory fee.

6. Item 3 of Form N–14, the registration form for business combinations involving mutual funds, requires the inclusion of a ''table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction using the format prescribed'' in item 2 of Form N–1A.

7. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Exchange Act. Item 22 of Schedule 14A sets forth the requirements concerning the information that must be included in a proxy statement. Item 22(a)(3)(iv) requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees using the format prescribed in item 2 of Form N–1A. Items 22(c)(1)(ii), 22(c)(1)(ii), 22(c)(8), and 22(c)(9), taken together, require that a proxy statement for a shareholder meeting at which an advisory contract is to be voted upon shall include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' the ''terms of the contract to be acted upon,'' and, if a change in fees is proposed, the existing and proposed rate schedule for advisory fees paid to the advisers, including the Managers.

8. Form N–SAR is the semi-annual report filed with the SEC by registered investment companies. Item 48 of Form N–SAR provides that the Funds must disclose the rate schedule for fees paid to their investment advisers, including the Managers.

9. Regulation S–X sets forth the requirements for financial statements required to be included as part of the registration statements and shareholder reports filed with the SEC under the Act and under the Securities Act. Items 6–07(2) (a), (b), and (c) of Regulation S–X require that the Funds' financial statements contain information concerning fees paid to the Managers by the Adviser.

10. Applicants state that all shareholders of the Funds will be fully advised of the fees charged by the Adviser for its investment advisory services because these fees will be disclosed in the Company's prospectuses and statements of additional information. Thus, each investor will know in advance the rate of investment advisory fees that each Fund will bear. Applicants argue that each investor, therefore, will be able to determine whether its cost for investment advisory services, including the selection and supervision of Managers and the reallocation of assets among multiple Managers from time to time, is competitive with the services and costs that the investor could obtain elsewhere. Under these circumstances, applicants assert that the particular fees of the Managers are not relevant to the investor.

11. Applicants believe that it is desirable for the Adviser to have maximum flexibility in negotiating fees with Managers. Applicants argue that some organizations will be unwilling to serve as Managers at any fee rate other than their ''posted'' fee rates unless the rates negotiated for the Funds are not publicly disclosed. Therefore, to force disclosure of a Manager's fees would tend to deprive the Adviser of its bargaining power while producing no benefit to shareholders. Applicants assert that the Adviser's ability to secure the services of Managers for the Funds at rates lower than their posted rates benefits both the Funds and their shareholders. If the Adviser were to lose negotiating flexibility through forced disclosure of a Manager's fees, applicants state that the Adviser might be forced to seek an increase in its own fees or to back off from its expense cap commitment. Further, they argue that opportunities for future reductions as Fund assets increase might be diminished. Thus, applicants believe that forced disclosure of Managers' fees could have negative repercussions for the Funds' shareholders.

12. Section 6(c) authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants assert that their request satisfies these standards.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. The Company will disclose in its registration statement the Limited Fee Disclosure.

2. The Adviser will not enter into a Portfolio Management Agreement with any Affiliated Manager without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

3. At all times, a majority of the Company's directors will be persons each of whom is not an ''interested person'' of the Company as defined in section 2(a)(19) of the Act (''Independent Directors''), and the nomination of new or additional Independent Directors will be placed with the discretion of the then existing Independent Directors.

4. Independent counsel knowledgeable about the Act and the duties of Independent Directors will be engaged to represent the Independent Directors of the Company. The selection of such counsel will be placed within the discretion of the then existing Independent Directors.

5. The Adviser will provide the board of directors of the Company, no less frequently than quarterly, information about the Adviser's profitability on a per-Fund basis. Such information will reflect the impact on profitability of the hiring or termination of any Managers during the applicable quarter.

6. Whenever a Manager is hired or terminated, the Adviser will provide the board of directors of the Company information showing the expected impact on the Adviser's profitability.

7. When a Manager change is proposed for a fund with a Affiliated Manager, the Company's directors, including a majority of the Independent Directors, will make a separate finding, reflected in the Company's board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Manager derives an inappropriate advantage.

8. The Adviser will provide general management services to the Company and the Funds and, subject to review and approval by the Company's board of directors will: (a) set the Funds' overall investment strategies; (b) select Managers; (c) allocate and, when appropriate, reallocate a Fund's assets among Managers; (d) monitor and evaluate the performance of Managers; and (e) ensure that the Managers comply with the Funds; investment objectives, policies, and restrictions.

9. Within 60 days of the hiring of any new Manager or the implementation of any proposed material change in a Portfolio Management Agreement, shareholders will be furnished all information about a new Manager or Portfolio Management Agreement that would be included in a proxy statement, except as modified by the order to permit Limited Fee Disclosure. Such information will include Limited Fee Disclosure and any change in such disclosure caused by the addition of a new Manager or any proposed material change in a Portfolio Management Agreement. The Adviser will meet this condition by providing shareholders, within 60 days of the hiring of a Manager or the implementation of any material change to the terms of a Portfolio Management Agreement, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement will also meet the requirements of Schedule 14A, except as modified by the order to permit Limited Fee Disclosure.

10. The Company will disclosure in its prospectuses the existence, substance, and effect of any other granted pursuant to the application.

11. Before a Future Company that does not presently have an effective registration statement may rely on the order, its initial shareholder will approve the Adviser/Manager structure before such Future Company offers its shares to the public.

12. No director or officer of the Company or the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director or officer) any interest in a Manager except for: (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt to a publicly-traded company that is either a Manager or an entity that controls, is controlled by, or is under common control with a Manager.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27316 Filed 11–2–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26402]

Filings Under the Public Utility Holding Company Act of 1935, As Amended (''Act'')

October 27, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested person wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 20, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Energy Incorporated (70–6971)

New England Energy Incorporated (''NEEI''), 25 Research Drive, Westborough, Massachusetts 01582, a fuel supply subsidiary of New England Electric System, a registered holding company, has filed a post-effective amendment to its application-declaration under Sections 6(a), 7, 9(a) and 10 of the Act.

By order dated August 16, 1984 (HCAR No. 23397), NEEI was authorized to enter into interest payment exchange contracts (''Swap Agreement(s)'') with one or more parties, on or before December 31, 1985, covering a total principal amount of up to $150 million of its outstanding debt (''Covered Amounts''). The Swap Agreements could have a term or terms ranging between three and seven years. The Covered Amounts represent borrowings last authorized for NEEI under a credit agreement (''Credit Agreement'') with certain banks in total amounts outstanding at any one time of up $400 million, through December 31, 1998 (HCAR No. 24847, March 29, 1989) (''Borrowings''). The Borrowings may be made at NEEI's option under any one of four interest rates.

By order dated March 7, 1986 (HCAR No. 24046), this authority was extended through December 31, 1987 and the Covered Amounts could be increased up to $200 million. Subsequently, by order dated December 17, 1987 (HCAR No. 24531), NEEI was authorized to enter into additional Swap Agreements and other types of interest rate protection mechanisms, up to the same principal amount, on or before December 31, 1989. Finally, by orders dated December 29, 1989, September 19, 1991 and December 1, 1993 (HCAR Nos. 25015, 25378 and 25935, respectively), all such authority was extended through December 31, 1995, under all of the same terms and conditions.

Subsequently, by order dated April 7, 1995 (HCAR No. 26268), NEEI was authorized to enter into a new credit agreement (''New Credit Agreement'') with a group of banks headed by Credit Suisse to replace the Credit Agreement. The New Credit Agreement initially provides for borrowings in outstanding amounts of up to $225 million. Available amounts under the credit facility reduce incrementally according to a schedule through April 7, 2002. Total borrowings by NEEI at September 30, 1995 were $180 million.

Currently, NEEI is a party to two Swap Agreements with a combined notional amount of $75 million. On October 21, 1993, NEEI entered into a three year Swap Agreement with Merrill Lynch Capital Services, Inc. for a notional amount of $50 million. On June 7, 1995, NEEI entered into a three year Swap Agreement with Citibank, N.A. for a notional amount of $25 million.